



Joint SENATE HA-FCS

Exhibit No. 2

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Bill No. HB2

American Civil Liberties Union
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Testimony HB 2

Mr. Chairman and Members of the Committee:

For the record, my name is Ginger Aldrich and I am speaking today on behalf of the American Civil Liberties Union of Montana.

The ACLU is disappointed with this proposed budget, not only because of the inadequacy of funding for essential programs in the departments of the Public Defender and Corrections, but also because of the obscured process of negotiations which ultimately led to this budget. Montanans expect a government which is forthright and transparent. They preciously guard their constitutional right to know how the governmental processes work. Our democracy is diminished when we do otherwise.

In 2005, the State of Montana and the 59th legislature were hailed as visionaries when they enacted a progressive and comprehensive Public Defender System that many hoped would become a model for reform efforts throughout the United States. The legislation, SB 146, took a momentous step towards building a more just Montana by establishing a constitutionally sound statewide public defender system. In large part, this legislation was based on litigation filed against the State of Montana and several of its counties by the ACLU. The suit alleged that the defendants failed to provide adequate public defender services, including administrative and financial resources to ensure the constitutional rights of indigents stipulated over forty years ago under the landmark U.S. Supreme Court decision, *Gideon v. Wainwright*.

At the request of legislative leaders and the Attorney General, the ACLU and the state of Montana set aside the litigation. They entered into a good faith effort allowing the Montana Legislature to attempt to adequately resolve the issue in the 2005 session.

The Public Defender Commission did its job to see that a quality system was constructed pursuant to the terms of SB 146. And since that legislation was passed, the ACLU has vigilantly watched the creation of this new program and has faithfully tried to ensure the promise of Gideon was properly enacted here in Montana – the promise that the least among us are protected from the overwhelming power of the state by adequate representation and that it is fundamentally un-American to have two tiers of justice. That promise can now only be fulfilled through the provision of sufficient funding.



The ACLU has honorably upheld its end of the settlement agreement negotiated in the Stipulation and Order of Postponement of Trial. And yet, now it appears that while the 2005 legislature took a giant stride forward, the 2007 legislature is poised to take two steps back – landing the indigent defense system where it was before the litigation started, with - among other things - underfunded and overworked litigators and staff.

The program is still in its infancy, a mere 10 months old -- a crucial time when the viability of its future will be determined. Cutting back its budget at this juncture hobbles this fledgling agency, and threatens the quality services it was designed to provide.

For the first time, the system is providing a detailed account of statewide indigent legal defense services. Full funding for this system is imperative, as it is one of the best tools we have for reducing court backlogs, jail overcrowding, and a rising influx into corrections facilities. Prosecutors, law enforcement officials, and judges have praised the system for providing some relief for long term jail conditions and overcrowding issues.

It is important to note that the proposed budget does not address capital cases; it does not adequately address the inflationary impacts from mandatory 25 year sentencing, nor does it anticipate less plea bargaining (because of the new mandatory sentences) and the subsequent rise in the number of cases that will go to trial.

Unavoidably, one must link cuts in Public Defender funding to the proposed budget cuts for the Department of Corrections, which chronically needs to ask for supplemental funding. Consider this:

- In May 2006, according to the US Bureau of Justice Statistics report on Prison & Jail Inmates, Montana led the nation with the largest percentage increase in a state prison population: up 7.9% between June '04 and June '05. Montana almost tripled the Federal rate of increase in prison population (2.9%) and was more than twice the overall state rate (1.2%).
- In February 2007, a Public Safety Performance report projected that by 2011 we can expect to see our prison system grow by one third or more unless we change our sentencing or release practices.

The ACLU cannot emphasize enough our belief that investing in treatment and education will directly and cost effectively confront the root problems of crime compared to more reactionary methods of crime management. Granted, treatment is a long-term crime reducing measure; but in the long run, it is one of the ONLY effective ways to significantly decrease costs relating to crime.

It is clear to us that the budget allocations in this bill for the Office of Public Defender and for the Department of Corrections budget are inadequate. The Office of the Public Defender was bound for a supplemental when it was initially funded in 2005. At the proposed level of funding, the Office of the Public Defender will again require a supplemental in order to provide the services and maintain the standards required by law. Underfunding indigent defense negates the entire intent of creating a public defender system in the first place.

Devoid of full funding or policy changes which are outside the scope of this special session, a supplemental is all but a certainty. So one must ask, is it better to have a direct and candid budget or one that can only address fundamental departmental needs for a portion of the biennium with the clear knowledge that a further budget will be required?

The ACLU urges this legislature to move Montana forward – return us to a place of leadership in respecting the fundamental rights of the least among us. Do not short change the Office of the Public Defender or the Department of Corrections. And please bear in mind that we are all better served when deliberations are exposed to the light of day – ensuring the public's fundamental right to know how the government operates.

Thank you, Mr. Chairman.